

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 289 of 2011

Wednesday, this the 29th day of February, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. N. Parameshwaran Nair
S/o. (Late) Padmanabha Paniker
Retired Divisional Engineer
Residing at 'Sri Kovil'
Thamarakulangara, Tripunithura
Kochi – 682 301.

... Applicant

[By Advocate Mr. M.R. Hariraj]

Versus

1. Union of India, represented by the Secretary,
Ministry of Communication, New Delhi.
2. Chief General Manager Telecom
BSNL, Kerala Circle, Thiruvananthapuram.
3. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.,
Sanchar Bhavan, New Delhi.

... Respondents

[By Advocate Mr. George Joseph for R-1]

[By Advocate Mr. Johnson Gomez R2-3]

This application having been heard on 14.02.12, the Tribunal on 29.02.12 delivered the following :

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A. commenced service as Telegraphist. His promotion to TTS Group-A and higher grade was held up due to a proposal to merge the Telegraph Traffic Service with the Indian Telegraph Engineering Service, which was ultimately dropped vide order dated 29.06.2000. Based on the decision to withdraw the proposal, the Tribunal in O.A. No. 1505/1998

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directed the respondents to work out equities in favour of the applicants, including the applicant in this O.A, based on the tripartite agreement dated 24.08.2000. In O.A. No. 136/2002, this Tribunal directed the respondents to consider him for promotion with reference to the date of occurrence of vacancies and if found eligible, to promote him with all consequential benefits. Again, O.A. No. 645/2003 was allowed granting arrears of pay to the applicant with cost of Rs. 1500/- to him. The order promoting the applicant to TTS Group-A in the cadre of STS was issued on 09.09.2004 with retrospective effect from 01.11.1997. The applicant has retired from service on 31.01.2003. On grant of retrospective promotion from 01.11.1997, his pay was fixed at Rs. 17300/- in the scale of Rs. 14500-18700, below of his officiating pay of Rs. 18350/-. His juniors who were officiating as Group-A officers or even Group-B officers were drawing higher pay than the applicant on account of point to point fixation in the IDA pay scale. As an officer in the STS with 4 years of service, the applicant is eligible for consideration of promotion to the Junior Administrative Grade (JAG) of the TTS Group-A. There were vacancies of JAG between 01.11.2001 to 31.01.2003. His claim for promotion to JAG cadre was rejected by Annexure A-1 order on the ground that he did not work in the cadre of STS. Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) To quash Annexure A-1;
- (ii) To direct the respondents to consider the applicant for grant of promotion to the Junior Administrative Grade of Group-A in ITS with effect from the date of occurrence of vacancy and to grant him the promotion with all consequential benefits including arrears of pay and allowances;
- (iii) To direct the respondents to resolve the anomaly caused by fixing his pay at Rs. 17300/- in pay scale of Rs. 14500-




18700 with effect from 01.10.2000;

(iv) To grant such other reliefs as may be prayed for and the Court may deem fit to grant; and

(v) Grant the costs of this Original Application.

2. The applicant contended that the impugned action of the respondents in denying promotion to the applicant to JAG with consequential pay fixation, arrears of pay and pensionary benefits is illegal, arbitrary and discriminatory. The binding tripartite judgements clearly hold that the applicant is entitled to all consequential benefits due to him by virtue of his promotion to STS of TTS Group-A with effect from the date of occurrence of vacancies. The principle of 'No work No pay' will not apply when the employee is kept away from the higher post for no reason attributable to him. The method of point to point fixation while fixing his pay in the IDA pay scale has caused anomaly of his pay being fixed below that of his junior in the same cadre or in the lower cadre. Such anomaly is to be resolved by granting stepping up applying F.R and S.R.


3. The respondents in their reply statement submitted that the applicant was given promotion to the cadre of STS of TTS Group-A with effect from 01.11.1997 retrospectively with all consequential benefits. The pay in the IDA pay scale is fixed on point to point basis from the substantive cadre. The applicant is not entitled to promotion to JAG cadre since the job function of the post is different with higher responsibility and the principle of 'No work No pay' is to be applied in his case. As he had retired from service on 31.01.2003, as such his claim for promotion to JAG cadre will not fall under the term "consequential benefits".



4. We have heard Mr. M.R. Hariraj, learned counsel for the applicant, Mr. George Joseph, learned ACGSC for respondent No. 1 and Mr. Johnson Gomez, learned counsel for the respondents No. 2 and 3 and perused the record

5. The respondents have denied promotion of the applicant to the JAG because he did not work in the post of STS with effect from 01.11.1997. The principle of 'No work No pay' is applicable only when the employee refrained himself from working. If an employee is kept away from the work for no reason attributable to him, there is no justification to invoke the principle of 'No work No pay'. In the instant case, the applicant was kept away from the work of STS cadre illegally. He was willing to work. For no fault of his, the promotion was denied to him and he was kept away from working on the post of STS. In O.A. 599/2009, this Tribunal held that "when actual promotion is denied illegally, the only way to rectify the same is by giving promotion, atleast notionally from the date he would have been promoted to the higher scale." Again, this Tribunal has decided number of cases in which direction was given to the respondents to resolve the anomaly of senior getting less pay than the junior on account of point to point fixation of pay in the IDA scale by stepping up of the pay of the senior to the level of the pay of the junior. In view of the settled legal position, the O.A. deserves to be allowed and we do so.

6. The respondents are directed to grant the applicant notional promotion to the JAG of Group-A in ITS with effect from the date of occurrence of vacancy and to refix his pension and other pensionary benefits accordingly.



The payment of arrears of pension will be limited to 3 years prior to filing of the instant O.A. The anomaly caused by fixing his pay at a level lower than that of his junior with effect from 01.10.2000 should be resolved by stepping up of his pay to the level the pay of his junior. Appropriate orders in this regard should be issued and payments due to the applicant should be paid within a period of 3 months from the date of receipt of a copy of this order.

7. No order as to costs.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

(Dated, the 29th February, 2012)



JUSTICE P.R RAMAN
JUDICIAL MEMBER

cvr.